

## **Minutes of the Kansas Sentencing Commission Meeting December 17, 2004**

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on December 17, 2004, at 1:45 p.m. The meeting was held in the Main Conference Room of the Department of Corrections, Landon State Office Building, Topeka, Kansas.

### **Attendance**

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, District Attorney, Vice Chairman; Honorable Christel Marquardt; Senator John Vratil; Senator Greta Goodwin; Representative Janice Pauls; Representative Jeff Goering; Roger Werholtz, Secretary of Corrections; Annie Grevas, Director of Community Corrections, 28<sup>th</sup> Judicial District; Chris Mechler, Office of Judicial Administration; Rick Kittel, Board of Indigents' Defense Services; Kevin Graham, designee, Office of Attorney General; Dr. Donald Jackson, Public Member; Kathleen Lynch, Private Defense Attorney. Staff: Patricia Biggs, Executive Director; Julia Butler, Staff Attorney; Kunlun Chang, Research Director; Fengfang Lu, Research Analyst; Lora Moison, Research Analyst; Heidi Zimmerman, Research Analyst; Brenda Harmon, Administrative Assistant; Marty Schmiedeler, Accountant. Guests: James Frazier, Juvenile Justice Authority; Bill Miskell, Juvenile Justice Authority.

### **Approval of the Minutes**

The Chairman referred to the minutes of the November 22, 2004, Kansas Sentencing Commission meeting. A motion was made to approve the minutes by Ms. Kathleen Lynch and seconded by Senator Greta Goodwin. The motion carried.

### **Death Penalty Statute found unconstitutional**

Mr. Rick Kittel gave a brief summary on the Death Penalty Statute finding announced today by the Kansas Supreme Court. A copy of the decision was distributed to Commission members. This potentially affects seven cases currently on death row.

### **Proportionality Study: Vera Institute of Justice**

Ms. Patricia Biggs announced the final report of the Proportionality Study has been received from the Vera Institute and is ready for distribution. Commission members received a copy of the report.

### **JJA Population Projection**

Ms. Biggs gave a PowerPoint presentation of the Juvenile Correctional Facility Population Projections for Fiscal Years 2005 – 2014. Commission members received a copy of the report. A motion was made by Mr. Kevin Graham, and seconded by the Honorable Christel Marquardt, to approve the report as presented. The motion carried.

## **Prison Population Subcommittee Report**

Mr. Paul Morrison summarized two recent teleconference meetings of the Prison Population Subcommittee. He discussed several proposals being worked on. Issues of concern were discussed.

Ms. Biggs asked Commission members to participate in a brainstorming session, with the following reduction possibilities raised and discussed:

- Low end of grid box as “default” + add 20% to top end of box
- Cut sentences on non-drug levels 5-10 and drug levels 3-4 by 10%
- Anyone with X number of months or fewer is released early
- Broaden SB 123 beyond drug possession offenders
  - a. Keep to non-violent
  - b. Property only
    - i. E.g., see probation violators, level 9-10, forgery/theft
- Any probation violator with 30 days or less for prison term doesn’t get revoked – instead gets other liberty restricting option
  - a. Examples could include:
    - i. GPS (estimate \$12-\$15 per person/day for expense; could be as low as \$3.50 per person/day – but you get what you pay for)
    - ii. Day Reporting – type option
- SB 67/4<sup>th</sup> DUI revocations
  - a. Revoke at local level since their initial incarceration was at local level
  - b. Treat & Monitor
    - i. KDOC - \$400,000 on treatment for them plus had to request \$200,000 supplemental last year
- Mental Health and Housing
- Criminal History H and I are combined
  - a. Criminal History would then run A – H where H would become “prior misdemeanors or no record” but have length of sentence as is now in Criminal History I
- Revert the task to the Legislature noting that the ideas we have left as less sound than we desire and may place public safety and/or individual accountability into jeopardy
- Note that rehabilitation and addiction treatment are the longer-term ways to reduce population
- Revocation Length of Stay for old-law parole condition violators equals the revocation length of stay for guidelines post release condition violators
  - a. Option A – for all old law offenders
  - b. Option B – for old law condition violators except those with “life” maximums
  - c. Option C – for old law condition violators except those with homicide or rape convictions
- Retroactivity for convictions that would qualify for SB 123

## **Senate Bill 123 Community Corrections Subcommittee Recommendations**

Ms. Patricia Biggs discussed the recommendations received from the three Community Corrections Subcommittees. Commission members discussed each recommendation and actions were made as follows:

The Language and the Invoice Subcommittees had recommendations in terms of the assessment process, recommending that it be moved back to post sentence instead of being handled with the presentence level. Following discussion, Commission members deferred action.

The Language Subcommittee suggested that language should be incorporated into SB 123 to address the issue of Interstate Compact cases. In many instances these individuals are receiving evaluations and they are not available to benefit from the intent or treatment funding of the statute following sentencing. SB 123 does not provide Courts with direction regarding a departure from sentencing an offender via SB 123 when that offender is a legitimate resident of another state (or country) and will not remain in Kansas. A motion was made by the Honorable Ernest Johnson and seconded by Mr. Kevin Graham to accept this recommendation for an amendment to give the judge the discretion to opt out of SB 123 treatment on a bona fide non-resident defendant who otherwise was mandated to receive SB 123 treatment. The motion carried.

The implementation manual, page 56, states that offenders shall be discharged from a program if they are convicted of a new felony other than 65-4160 or 65-4162, or have a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding. As worded, the Language Subcommittee feels the language in the statute allows the Court to determine that a new conviction for drug possession offenses can constitute a refusal to comply with or participate in a treatment program. A motion was made by Senator John Vratil and seconded by Ms. Kathleen Lynch to reject action on this on the basis that the data indicates this is not a problem. The motion carried.

The Language Subcommittee recommended the statute does not address those offenders that are charged with a drug possession and a person offense. In this circumstance, the offender should not be sentenced via SB 123, as the person offense overrides the possession offense. A motion was made by Mr. Kevin Graham and seconded by Ms. Chris Mechler to approve this amendment with the following change in wording: "the SB 123 treatment program apply only to the offender whose primary or only offense of conviction is a violation of the otherwise targeted crime." The motion carried.

The Language Subcommittee recommended the following: While the manual states clearly that an offender may not be revoked for technical violations, there are circumstances where revocation would be prudent, for public safety reasons. The courts and supervision officers must have some latitude when technical violations are significant and pose a threat to the community or issues of drug/alcohol use, who fails to comply with this sanction, cannot be held accountable. This individual could disregard House Arrest, with their whereabouts and actions unknown, and could be revoked under the

current direction of the manual. This must be addressed to provide the community, Court, supervising officer and offender protection. Following discussion, Commission members felt this was a misinterpretation. Ms. Annie Grevas made a motion to reject the recommendation. Ms. Kathleen Lynch seconded, and the motion to reject carried.

The following three recommendations were made by the Invoice Subcommittee:

The district that is providing the direct supervision of the offender shall approve invoices. When cases are transferred, the receiving ISO shall approve the invoices. Further, it will not be necessary for the receiving ISO to copy the invoice and return it to the sending ISO.

Timing of the Invoice Submission: It is recommended that the Implementation Manual on page 82 reflect that the treatment provider shall submit invoices to the ISO within 10 working days from the end of each month. Any invoices submitted by the treatment provider later than 45 days from the end of the month of service shall be denied by the ISO and sent to the Sentencing Commission as a denied claim.

The caps for treatment modalities should be maintained as they are set out on page 61 of the Implementation Manual. The manual should spell out that one treatment modality may be repeated if deemed necessary by the team meetings during the course of the probation and treatment process. However, this does not preclude a second in-patient treatment for the same offender during 18 months of supervision.

Following a discussion by Commission members, Ms. Janice Pauls made a motion to handle these three Invoice Subcommittee recommendations administratively. Mr. Roger Werholtz seconded the motion. The motion carried.

### **Senate Bill 123 Subcommittee update**

Chairman Johnson discussed the input he has received requesting changes in Senate Bill 123. Commission members discussed two changes that have to do with Policy.

The first amendment discussed has to do with convictions **included** in Senate Bill 123 such as 65-4160 and 65-4162. The way the statute is drawn does not address convictions of “attempt, conspiracy or solicitation” of these included offenses. An amendment was discussed to change the statute language to include “attempt, conspiracy or solicitation” to commit these included offenses.

The second amendment discussed had to do with the convictions that are **excluded** from Senate Bill 123. The way the statute is drawn does not address convictions of “attempt, conspiracy or solicitation” to commit these excluded offenses. An amendment was discussed to change the statute language to exclude not only those who are convicted of the excluding offenses, but also those that are convicted of “attempt, conspiracy or solicitation” to commit these excluded offenses.

A motion was made by Ms. Kathleen Lynch and seconded by Mr. Paul Morrison to recommend these two amendments to the Legislature. The motion carried.

### **Senate Bill 45 3-R Committee update**

Mr. Kevin Graham gave an update on recent meetings held by the Senate Bill 45 Kansas Criminal Recodification, Rehabilitation and Restoration Project Committee. A professor from the University of Pennsylvania has been hired to assist with the Recodification of Kansas Criminal Code. Mr. Roger Werholtz presented a Capacity Expansion Options report at a recent 3-R Committee meeting. KDOC is statutorily required to submit this report to the Legislature. Copies are available for Commission members.

### **Next Meeting**

The next Kansas Sentencing Commission meeting was scheduled for Friday, January 14th, 2005, at 1:30 p.m.

A motion was made to adjourn the meeting by Representative Jeff Goering, and seconded by Mr. Roger Werholtz. The motion carried, and the Chairman adjourned the meeting.